

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

11 RICHARD BLACKER,)
12 Plaintiff,)
13 v.)
14 SPRING HARBOR SENIOR LIVING,)
15 LLC, an Oregon Limited)
Liability Company; JON M.)
HARDER; and DARRYL E. FISHER,)
16 Defendants.)

No. CV-08-977-HU
OPINION & ORDER

Gary I. Grenley
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24 BROWN, District Judge:

25 Plaintiff Richard Blacker brings this breach of contract
26 action against defendants Spring Arbor Senior Living, LLC (Spring
27 Arbor), Jon Harder, and Darryl Fisher. Blacker moves for summary
28 judgment on the breach of contract claims. The case has been stayed

1 with regard to Harder due to his bankruptcy filing on December 31,
2 2008. With that one exception, I grant the motion.

3 BACKGROUND

4 Pursuant to Local Rule 56.1(f), the facts asserted by Blacker
5 in his summary judgment motion, and supported by the Declaration of
6 Gary I. Grenley and accompanying exhibits, are deemed admitted by
7 Fisher and Spring Arbor because those defendants failed to respond
8 to those asserted facts. Thus, the well-pleaded factual allegations
9 in the Complaint regarding those defendants' liability are also
10 deemed true. Fair Housing of Marin v. Combs, 285 F.3d 899, 906 (9th
11 Cir. 2002).

12 Blacker lent \$100,000 to Spring Arbor at the request of
13 Harder and Fisher. Spring Arbor executed a Promissory Note in favor
14 of Blacker for the sum of \$100,000, plus interest at the rate of
15 12% per annum, with monthly interest payments due until the loan
16 was payable in full. Grenley Declaration, Exhibit 1. As further
17 consideration for the loan, Harder and Fisher each signed a
18 Personal Guaranty for the Promissory Note. Id. at Exhibit 2. Spring
19 Arbor failed to make the interest payment due on July 10, 2008, and
20 a Notice of Default was given to each defendant on July 30, 2008.
21 Id. at Exhibit 3. No further payments were made; consequently, the
22 full, unpaid balance of the Promissory Note became due and payable,
23 including an obligation under the terms of the Promissory Note to
24 pay default interest at the rate of 15% per annum, on July 30,
25 2008. Id. at Exhibit 1, Section 5. The terms of the Promissory Note
26 and the Personal Guaranty provide for the payment of attorney's
27 fees and costs. Id. at Exhibit 1, Section 10 and Exhibit 2, Section
28 14.

1 Harder filed for bankruptcy on December 31, 2008, and a notice
2 of automatic stay was filed in this Court on January 12, 2009.

3 STANDARDS

4 Summary judgment is appropriate if there is no genuine issue
5 of material fact and the moving party is entitled to judgment as a
6 matter of law. Fed. R. Civ. P. 56(c). The moving party bears the
7 initial responsibility of informing the court of the basis of its
8 motion, and identifying those portions of "'pleadings, depositions,
9 answers to interrogatories, and admissions on file, together with
10 the affidavits, if any,' which it believes demonstrate the absence
11 of a genuine issue of material fact." Celotex Corp. v. Catrett, 477
12 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)).

13 "If the moving party meets its initial burden of showing 'the
14 absence of a material and triable issue of fact,' 'the burden then
15 moves to the opposing party, who must present significant probative
16 evidence tending to support its claim or defense.'" Intel Corp. v.
17 Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991)
18 (quoting Richards v. Neilsen Freight Lines, 810 F.2d 898, 902 (9th
19 Cir. 1987)). The nonmoving party must go beyond the pleadings and
20 designate facts showing an issue for trial. Celotex, 477 U.S. at
21 322-23.

22 DISCUSSION

23 The record establishes that Spring Arbor and Fisher breached
24 the Note when they failed to make any interest payments after June
25 2008, and failed to make any payments after receiving the Notice of
26 Default. At that point, under the terms of the Promissory Note,
27 the principal and interest were immediately due and collectible.
28 Blacker is entitled to summary judgment on the breach of contract

1 claims against Spring Arbor and Fisher. The motion for summary
2 judgment against Harder is stayed as a result of the bankruptcy.

3 CONCLUSION

4 Plaintiff's motion for summary judgment (doc. #15) on the
5 breach of contract claims is GRANTED as to defendants Spring Arbor
6 and Fisher. The motion is STAYED as to defendant Harder.
7 Plaintiff's Motion for Entry of Judgment (incorrectly docketed as
8 Motion for Default Judgment) (doc. #18) and plaintiff's Motion for
9 Entry of Order Granting Plaintiff's Motion for Summary Judgment
10 (doc. #17) are DENIED as moot. A separate Judgment will be entered.

11
12 IT IS SO ORDERED.

13
14 Dated this 19th day of February, 2009.

15
16 /s/ Anna J. Brown

17 _____
18 Anna J. Brown
United States District Judge